

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
OCTOBER 02, 2018**

CALL TO ORDER
6:01 pm

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:01 p.m. in the 2nd floor conference room of the Earl Bennett Building, 1035 First Ave West, Kalispell, Montana. Board members present were Cal Dyck, Ole Netteberg, Gina Klempel, Roger Noble and Mark Hash. Mark Mussman and Erik Mack represented the Flathead County Planning & Zoning Office.

There were 66 members of the public in attendance.

**APPROVAL OF
MINUTES**
6:01 pm

Klempel motioned and Dyck seconded to approve the September 04, 2018 minutes as written. The motion passed unanimously by quorum.

**PUBLIC
COMMENT**
*(Public matters that
are within the
jurisdiction of the
Board 2-3-103
M.C.A)*
6:01 pm

Hash announced there was an appeal before the board tonight which involved a very limited scope of what they could hear. He asked Mussman to clarify how the appeal process worked because they were going to hear public comment related to the appeal.

Mussman said he conferred with the County Attorney's office regarding that there might be some parties interested in this particular topic. Due to the nature of the appeal being very specific, the county attorney considered that anybody who wanted to make comments, not specifically to the appeal, could be given the opportunity to speak during this time regarding anything that would fall under the jurisdiction of the Board of Adjustment.

Hash verified to the room that anybody was allowed to speak at this time but would be limited to 3 minutes.

Heidi Delle, 975 Swan Hill Drive, shared that she had spent time at the Krachun's home to learn about different weapons and in turn teach her students about WWI. She stated she had been invited as a guest for an educational experience and did not pay for any of it. Nothing of commercial activity was brought up. She said it was a beautiful learning experience and she would not be able to give that to her students if not given that opportunity.

Will Parker, 5050 HWY2 West, spoke in favor of property owner's rights

Lynn Kehoe, 1000 Blue Lake Lane, was in opposition of the shooting that had been more frequent and affecting the wildlife. She said it would be good if it wasn't going on as much.

Connie Septone, address unknown , she spoke in favor of the gun ranch and said that it was a lot of fun. She wondered what authority the BOA had and if the applicant could get a variance. She encouraged people that were afraid of guns to go there and become educated.

Lindi Thompson Smith, 1405 Firemans Island Road, had property directly east of the subject property. She said on Mother's Day she was enjoying her property and was disrupted by gun shots. She said there was a noise restriction on Echo Lake for boats and did not understand why the gun shots were allowed.

Christopher Marx, 424 Belterra Ln., noted that he loved his guns and his property. He loved being able to do what he wanted to do on his property. His house was at the end of the gun range and frequently had bullets ricochet on to his property. He and other neighbors have had bullets on their property. He did not have a problem with guns but when the gun range was affecting their stuff, that's when he had a problem. He suggested that they do all the things to deem it safe.

Cole Armstrong, 492 Peaceful Drive, relayed information about what the zoning commission could and could not do. He said The Montana Shooting Range Protection Act applied to the situation and noise was not a viable argument. He said bullets coming on to a property was a safety issue and they could ask the range to put in safety measures. He said if the zoning commission got involved, they would have to purchase the property and then purchase a property of like value to move the range to. He said if he lived there and there were bullets coming through he would not be pleased but the shooting range protection act protected the property and gave them the right to improve their property.

Clint (Unknown), 214 Hoffman Dr, felt it was important for people to understand The Montana State Law; what people were allowed to do with their property, and how far the Planning and Zoning committee was allowed to go according to state law. He felt people needed to work better together to become better neighbors.

Jim Marshall, 1248 LaBrant Rd., felt that the main issue was the commercial use of the gun range. He said that if it was private use people would not be hearing it all day long, day by day.

Suzanne Smith, 361 Belterra Ln., said the gun range was basically in their back yard. She feared for her safety and was unable to enjoy her back yard. She understood how everyone felt about guns but she wanted to enjoy her property without feeling like she was going to get killed. She said there wasn't a safety backdrop. Her biggest concern was safety and [the applicant] keeping others in mind around the residential area.

Dennis Dal Pra, 267 Whispering Meadows Trail, was a certified range safety officer and friends of the appellant. He had a trained eye for safety and had been to that range. He had never seen anything that would be deemed unsafe. If he had witnessed unsafe activity, he would never want to go back but did not feel that was the case.

**MCINTIRE,
YOUNG, AND
LUND
(FCU-18-08)
6:19 pm**

A request from Jackola Engineering and Architecture, on behalf of Smithlin McIntire and Young, LLC and Curtis Lund for a conditional use permit to construct multi-family dwellings on properties located within the Willow Glen Zoning District. The properties are located at 62 Sager Lane, 64 & 66 Sager Lane, and 70 Sager Lane, near Kalispell, MT and are zoned B-3/EEO (Community Business/Evergreen Enterprise Overlay). The properties contain approximately 11.36 acres and can legally be described as Tracts 9AA, 9AAD, 9AAB, 9AABA, 9AAI and 4-5 in Section 04 and Section 09, Township 28 North, Range 21 West, P.M.M., Flathead County, Montana.

**STAFF REPORTS
6:19 pm**

Mack reviewed the Staff Report FCU-18-08 for the board

**BOARD
QUESTIONS
6:21 pm**

Klempel wondered if they could widen Sager Lane. Mack said it would be a difficult task because they would have to obtain easements from property owners. He differed to the applicant's engineer for a better understanding.

**APPLICANT
PRESENTATION
6:22 pm**

Rory Young with Jackola Engineering and Architecture, 2250 Hwy 93 S, represented the applicant tonight and was available for questions. He said there was an existing easement and if he had to widen it to a full city street, they would need additional easements. He said neither the county nor the MDT were requiring it at the moment.

**BOARD
QUESTIONS
6:23 pm**

Dyck wondered what the total height would be. Young said they had requested a PUD for height variance for 55'. Mack said that the PUD was put in to affect already and was granted up to 60'. Dyck asked if fire protection was an issue. Young said they were working with Evergreen Fire Marshall and had sprinklers in the building.

**PUBLIC
COMMENT
6:24 pm**

None

**APPLICANT
REBUTTAL
6:24 pm**

None

**BOARD
DISCUSSION
6:25 pm**

Klempel asked if they were going to get enough property to expand Willow Glen. Mack said the city was asking there be no structures or buildings built in the future easement. From the site plan, the only thing that might be close was the garbage dumpsters. He said if it was approved with the conditions as stated, they would not be able to vary from the site plan. Hash wondered if there needed to be additional conditions and Mack said he didn't think it would be necessary.

Netteberg asked where Willow Glen would intersect. Mack pointed it out on the map that the board had in front of them.

**MOTION TO
ADOPT F.O.F
(FCU-18-08)
6:28 pm**

Klempel made a motion, seconded by Netteberg, to accept Staff Report (FCU-18-08) as Findings-of-Fact.

**BOARD
DISCUSSION
6:28 pm**

None

**ROLL CALL TO
ADOPT F.O.F
(FCU-18-08)
6:28 pm**

Motion passed unanimously on a roll call vote.

**MOTION TO
APPROVE
(FCU-18-08)
6:28 pm**

Klempel made a motion, seconded by Netteberg, to approve the application (FCU-18-08).

**ROLL CALL TO
APPROVE
(FCU-18-08)
6:29 pm**

The motion passed unanimously on a roll call vote.

**KRACHUN
APPEAL 18-03
6:29 pm**

An appeal by Michael Krachun 2010 Trust regarding interpretations of the Flathead County Zoning Regulations (FCZR) made by the Zoning Administrator determining that Mr. Krachun's gun range located at 395 Echo Bay Trail, Bigfork, MT violates existing zoning regulations. The subject property is approximately 60.4 acres and can legally be described as Tract 3A in

Section 06, Township 27 North, Range 19 West, P.M.M., Flathead County, Montana.

**STAFF
ADDRESSED
PUBLIC
6:30 pm**

Mussman explained to the crowd that the Board of Adjustment was a volunteer board, appointed by the commissioners, and were responsible for hearing and making final decisions on zoning variances, conditional uses, and appeals from the zoning administrator's interpretations. This particular appeal was on an interpretation regarding a commercial use of a piece of property that was not zoned commercial. He had made a determination that this particular piece of property where firearms were discharged was, by reason of an abundance of social media advertising and business cards, linked the unpermitted commercial use to Bigfork Guns and Ammo. He said that particular use could be approved by having an approved conditional use permit for a rifle range in the AG-40 zone. The property owner appealed the director's decision and that was why they were here today. He appealed the interpretation that, through advertising, the gun range was commercially linked to Bigfork Guns and Ammo.

Hash clarified that the board would listen to the appellant and then make a decision.

**APPEALANT
PRESENTATION
6:32 pm**

Clint Fischer, Atty., 15 3rd Ave E., Polson, represented the appellant in the current appeal. He said the appellant had agreed to remove any reference of his gun range to his business; therefore the violation had been amended. He said his client had taken steps to remove any reference to his gun range at his business as well as media and advertising. It was his understanding that after the appellant acknowledged that it had been completed, then it would be indicated that there would be nothing for the board to hear and the violation would be withdrawn.

Hash said that he had not made an agreement with anybody and could not speak on behalf of the whole board, therefore the planning office had to tell them what to decide on and the board would do so. They wanted to hear the staff's thoughts because there were a lot of ways to do commercial advertising. Hash said Mussman would need to make the decision on whether the violation was now in compliance.

Fisher said the noted violation was specifically in regards to media which referenced his gun range to his business. He believed that was all that could be addressed at this meeting.

Michael Krachun, 395 Echo Lake Trail, identified his property as having the gun range. He confirmed that he had removed all references to the shooting range from any sort of advertising or any connection with the retail gun business Bigfork Gun and Ammo. He said he removed the “try before you buy” from the Polson sign, the Bigfork business sign, and anything that they could access on the internet. He said they show up as a licensed dealer on FFL but it didn’t mean that they were conducting business there. They had a license for that location and a license for the Bigfork store. He did not have any guns on the books for the said address and guns were not being sold there.

STAFF REBUTAL
6:41 PM

Mussman explained the violation; that this type of commercial use was not a permitted use within the AG-40 zoning, although it could be with an approved conditional use permit for a rifle range. He said it was brought to the office’s attention that there had been advertising for people to “try before you buy” at Bigfork Guns and Ammo. The office approached the violator and told them that it was a potential zone violation, in which he took down the ad, and the violation was closed. A year later, they received complaints on similar advertisements in Polson as well as on social media. The director’s interpretation was that it was a commercial link to the appellant’s business. He reviewed photos presented this evening that showed the “try before you buy” advertisement had been removed. He said they could only go by Krachun’s word regarding the elimination of all of the commercial links, however, there would be residents in the area that would continue to monitor him. If it occurred again, they would have to go back through the process. He said they could not police what he told customers and/or friends or how he invited guests to be out on his property.

BOARD
QUESTIONS
6:46 pm

Hash asked what exactly he was in violation of and if he was in violation today. Mussman said that he was in violation of operating commercially in an AG-40 zone with a non-permitted use. Given the evidence and testimony given tonight, he believed the alleged violation was closed.

Hash asked if there was anything for the board to decide this evening. Mussman reiterated that he believed there was no longer a violation given the testimony and evidence given tonight.

NEW BUSINESS
6:49 pm

Mussman informed the board that there would be board training on October 25, 2018 that all members are encouraged to attend.

He also mentioned there were board terms expiring and letters would be going out for people who want to renew their term.

OLD BUSINESS

None

6:50 pm

**MEETING
ADJOURNED**

6:50 pm

The meeting was adjourned on a motion by Noble and Dyck at approximately 6:50 pm. The next meeting will be held December 04, 2018.



Mark Hash, Chairman



Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED 12/04/2018